

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

COLE STEEL INTERNATIONAL, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2463

Decision No. CU - 4441

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by COLE STEEL INTERNATIONAL, INC. in the amount of \$31,701.88 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 73 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 505(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in New York.

The record discloses that claimant is now and at the time of filing this claim was a subsidiary of Litton Industries, a Delaware corporation, that at all pertinent times more than 50% of the outstanding capital stock of the parent corporation has been owned by United States nationals, and that not more than 5% of its voting stock has been owned by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of invoices and letters to and from claimant's bank reflecting the sale of merchandise by claimant corporation to Cuban consignees. Claimant has submitted two lists which summarize its claim and which disclose the names of the consignees, the invoice numbers and dates, the draft amounts, the bank collection numbers and the dates payments were due or paid to the bank. A condensation of these lists follows:

CU-2463

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE DUE OR PAID TO BANK</u>
Octavio Estrada Auchet	\$ 2,377.22	September 15, 1959
	2,641.11	July 3, 1957
	3,370.73	November 10, 1958
	2,859.01	December 6, 1958
	4,125.81	April 10, 1959
Editorial Guerrero, S.A.	152.14	December 10, 1959
	669.83	March 6, 1959
	669.83	April 5, 1959
	152.15	March 5, 1959
Bolsa de Muebles de Oficina Arneco, S.A.	1,045.95	July 14, 1959
	1,045.95	June 14, 1959
	194.00	March 10, 1959
Distribuidora Facit	4,539.00	January 8, 1960
Compania Importada Selenova	2,098.99	October 13, 1959
Pedro Rodriguez Zamora	704.00	December 21, 1959
Casa Vasquez	4,792.16	April 28, 1960
Domingo Sanchez	132.00	May 9, 1960
	132.00	September 1, 1960
	<u>\$31,701.88</u>	

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Fiber Company, Claim No. CU-0019, 25 FGSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Ytina Porcelana Corporation, Claim No. CU-0049, 1967 FGSC Ann. Rep. 46.)

CU-2463

Accordingly, in the instant claim, the Commission finds that the afore-said sums totalling \$31,701.88 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notifi-cation of payments were made to claimant corporation.

Claimant states that in 1961 the United States Internal Revenue Service allowed an income tax deduction for subject loss.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$19,191.59
October 14, 1959	2,098.99
December 11, 1959	152.14
December 22, 1959	704.00
January 8, 1960	4,539.00
April 29, 1960	4,792.16
May 10, 1960	132.00
September 2, 1960	132.00
	<u>\$31,701.88</u>

CU-2463

CERTIFICATION OF LOSS

The Commission certifies that COLE STEEL INTERNATIONAL, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-One Thousand Seven Hundred One Dollars and Eighty-Eight Cents (\$31,701.88) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

89 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2463